



IN THE
Supreme Court of the United States

OCTOBER TERM, 1945.

No. 340

SANTO GRASSO,

Petitioner,

against

OIVIND LORENTZEN, Director of Shipping and
Curator for the ROYAL NORWEGIAN GOV-
ERNMENT, operating as a NORWEGIAN
SHIPPING & TRADE MISSION,

Respondent.

**BRIEF IN OPPOSITION TO PETITION
FOR REARGUMENT**

EDGAR R. KRAETZER,
Counsel for Respondent.



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RESPONDENT'S BRIEF

Petitioner's application for leave to reargue the petition for a writ of certiorari which was denied by this Court on the 8th day of October, 1945, is stated to be based solely upon the recent decision of this Court in *Seas Shipping Co., Inc., v. Sieracki*, decided April 22, 1946.

Factually the apparatus involved in the *Sieracki* case was a practically inaccessible shackle near the top of the ship's mast, whereas in the *Grasso* case the equipment consisted of an easily accessible strap, which was customarily subjected to examination by the operating stevedores. This distinction is obvious from the following quotations from the decisions by the respective Circuit Courts of Appeal:

Sieracki v. Seas Shipping Co., 149 F. (2d) 98, 99:

" * * * After rigging the gear on the ten-ton boom, which had never been used up to this time, the longshoremen lowered one piece of freight into the hold of the ship and were engaged in stowing

away the second part of the freight car, the weight of which was not in excess of 8.2 tons, when the shackle which supported the ten-ton boom broke, causing the boom and tackle to come down and injure the plaintiff.' ”

Grasso v. Lorentzen, 149 F. (2d) 127, 129:

“The following findings of fact made by the trial court are based on substantial evidence:

‘11. Straps used as was the one in question are quite likely to break, and it was the established custom to examine them from time to time while they were in use.

‘12. It was the established custom and practice of Northern Dock Company to examine and inspect a strap before assigning it for use.

‘13. No adequate inspection of the strap that broke was made before the longshoremen put it into use, and no adequate examination was made by them while it was in use.

‘14. The accident occurred because the longshoremen put into use and continued in use, without adequate inspection, the strap that broke.’

It was shown that these straps were subject to heavy wear and that they often broke in use. This particular strap was bent over the edge of the comparatively narrow gusset plate, and during two days before it broke had been withstanding strains put upon it while it was used in moving into position fifteen or sixteen crates each weighing from four to seven tons. * * *

The petition should be denied.

Respectfully submitted,

EDGAR R. KRAETZER,
Counsel for Respondent.

